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**From:**

**Sent:** Monday, October 27, 2008 4:18:21 PM

**To:**

**Cc:**

**Subject:** RE: AAR

I think we need to issue an FPAA for \_\_\_\_\_ that reflects the determination since the partnership cannot bind any partner - you state that the partnership conceded that issue but I don't see how we can assess that concession without an FPAA or an agreement from all the partners who will be affected. The partnership has no power to waive restrictions on assessment for the partners in partnership with less than 100 partners.

If the fee deduction came in under an AAR (the critical fact of whether this is the procedural posture was left out of the facts below) the determination could be our letter setting forth which part of the AAR is allowed and which part is disallowed. This determination would not become "final", however, until two years later under section 1313(a)(3)(B)

The mitigation provisions apply "notwithstanding any other law or rule of law", so we are free to make the taxpayer favorable adjustment any way we want once the concession for \_\_\_\_\_ is reflected in a final determination under section 1313.